

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1827/1 2

ARG:jld:pg

ink
RM R

TODAY

DOA:.....Kraus, BB0456 - Three-tier distribution system; paperless
intoxicating liquor wholesalers

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

Under current law, alcohol beverages are generally distributed to consumers under a three-tier distribution system: the manufacturer may sell only to a wholesaler or rectifier; the wholesaler or rectifier may sell only to a wholesaler or to a retailer; and the retailer may sell only to the consumer. With specific exceptions, no person may sell outside of the three-tier system. DOR issues intoxicating liquor wholesalers' permits authorizing the sale of intoxicating liquor (wine and distilled spirits) at wholesale from the premises described in the permit to intoxicating liquor retailers and to other wholesalers. With limited exceptions, a manufacturer may not hold any direct or indirect interest in a wholesaler and a manufacturer or wholesaler may not hold any direct or indirect interest in a retailer.

Under this bill, any intoxicating liquor sold by a wholesaler must be physically unloaded at the wholesaler's premises prior to being delivered to a retailer or to another wholesaler, and the wholesaler's premises must be capable of warehousing intoxicating liquor. Also, a wholesaler must annually sell and deliver intoxicating liquor to at least ten retailers that do not have any direct or indirect common ownership interest with each other or with the wholesaler. If a wholesaler violates

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these requirements, in addition to the current penalty of a fine of up to \$1,000 or imprisonment for not more than 90 days or both, a court may order that the wholesaler forfeit profits gained from the violation and that the wholesaler's permit be revoked. A retailer that receives a benefit from a wholesaler violation, with knowledge of the circumstances giving rise to the violation, is subject to similar penalties. The bill also requires DOR to promulgate rules related to enforcement of these requirements.

Under current law, DOR may suspend or revoke any alcohol beverages permit issued by DOR for violating any legal requirement. This bill creates a new, similar mechanism that applies specifically to suspension or revocation of wholesaler's permits based upon written allegations, including allegations of third parties, without a hearing.

Under current law, upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any alcohol beverages violation, but DOR is not authorized to prosecute such violations. This bill authorizes DOR or, effective January 1, 2006, DOA's division of legal services, to prosecute violations of the wholesaler requirements created by the bill. The bill also creates a private cause of action on behalf of wholesalers, retailers, and trade associations allowing them to prosecute violations of the wholesaler requirements created by the bill if a complaint is made to DOR and DOR fails to timely render a decision on the complaint.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.12 (6) of the statutes is created to read:

2 **125.12 (6) REVOCATION OR SUSPENSION OF INTOXICATING LIQUOR WHOLESALERS'**
3 **PERMITS FOR CERTAIN VIOLATIONS.** (a) Any person may file a sworn written complaint
4 with the department alleging that an intoxicating liquor wholesaler has violated s.
5 125.54 (7) (a). The complaint shall identify the specific legal basis for the complaint
6 and sufficient facts for the department to determine whether there is cause to find
7 that a violation has occurred. The department shall provide a copy of the complaint
8 to any wholesaler against whom allegations are made, along with notice of the time
9 period under par. (b) to show cause why the wholesaler's permit should not be
10 revoked or suspended.

1 (b) Within 30 days of receiving a copy of the complaint under par. (a), any
2 wholesaler against whom allegations are made may file a sworn written response.

3 (c) Subject to par. (d), within 60 days of receiving any response under par. (b)
4 or, if no response is made, within 60 days of the date on which a response is due under
5 par. (b), the department shall make a written decision as to whether a violation has
6 occurred and either dismiss the complaint or take action under par. (e). Any decision
7 under this paragraph shall include findings of fact and conclusions of law and shall
8 state all reasons for the decision. The department shall provide a copy of the decision
9 to the complainant and to any wholesaler against whom allegations are made.

10 (d) Within 60 days of receiving any response under par. (b) or, if no response
11 is made, within 60 days of the date on which a response is due under par. (b), the
12 department may extend the time period for making a decision under par. (c) by an
13 additional 60 days if the department provides notice within the time period specified
14 in par. (c) that an additional 60 days is necessary for investigation.

15 (e) If the department finds the allegations true and sufficient, the department
16 shall either suspend for not less than 10 days nor more than 90 days or revoke the
17 wholesaler's permit, and give notice of the suspension or revocation to the
18 wholesaler.

19 (f) A revocation or suspension under this subsection is a contested case under
20 ch. 227.

21 **SECTION 2.** 125.145 of the statutes is amended to read:

22 **125.145 Prosecutions by attorney general or department.** Upon request
23 by the secretary of revenue, the attorney general may represent this state or assist
24 a district attorney in prosecuting any case arising under this chapter. The

1 department may represent this state in prosecuting any violation of s. 125.54 (7) (a)
2 or (b) and shall bring any such action in the circuit court for Dane County.

3 **SECTION 3.** 125.145 of the statutes, as affected by 2005 Wisconsin Act (this
4 act), is amended to read:

5 **125.145 Prosecutions by attorney general or department of**
6 **administration.** Upon request by the secretary of revenue, the attorney general
7 may represent this state or assist a district attorney in prosecuting any case arising
8 under this chapter. The department of administration, division of legal services, may
9 represent this state in prosecuting any violation of s. 125.54 (7) (a) or (b) and shall
10 bring any such action in the circuit court for Dane County.

11 **SECTION 4.** 125.15 of the statutes is created to read:

12 **125.15 Actions against intoxicating liquor wholesalers.** If any
13 intoxicating liquor wholesaler, intoxicating liquor retail licensee or permittee, or
14 intoxicating liquor trade association makes a written complaint to the department
15 under s. 125.12 (6) of a violation of s. 125.54 (7) (a), and the department has not
16 rendered a decision within the time periods specified in s. 125.12 (6) (c) and (d), the
17 complaining party may bring an action to enforce the provisions of s. 125.54 (7) and
18 shall be entitled to recover reasonable attorney fees if found to be the prevailing
19 party.

20 **SECTION 5.** 125.54 (7) of the statutes is created to read:

21 **125.54 (7) BONA FIDE WHOLESALERS.** (a) 1. The premises described in a permit
22 issued under this section shall be capable of warehousing intoxicating liquor. Any
23 intoxicating liquor sold by the permittee shall be physically unloaded at the premises
24 described in the permit prior to being delivered to a retail licensee or permittee or to
25 another wholesaler.

1 2. A permittee under this section shall annually sell and deliver intoxicating
2 liquor to at least 10 retail licensees or permittees that do not have any direct or
3 indirect ~~common ownership~~ interest ⁱⁿ with each other or ~~with~~ the permittee under this
4 section. The department shall not issue a permit under this section unless the
5 applicant represents to the department an intention to satisfy this requirement, and
6 shall not renew a permit issued under this section unless the permittee
7 demonstrates that this requirement has been satisfied.

8 (b) No intoxicating liquor retail licensee or permittee may receive a benefit from
9 a violation under par. (a) with knowledge of the circumstances giving rise to the
10 violation.

11 (c) 1. In addition to imposing any penalty provided under s. 125.11, a court may
12 order a wholesaler who violates this subsection to forfeit an amount equal to any
13 profit gained by the wholesaler or by a retail licensee or permittee that violates par.
14 (b), or by both, resulting from the violation, and the court may further order that the
15 wholesaler's permit be revoked except that, if the wholesaler violates par. (a) 2., the
16 permit shall be revoked.

17 2. In addition to imposing any penalty provided under s. 125.11, a court may
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19 equal to any profit gained by the retail licensee or permittee resulting from the
20 violation, and the court may further order that the retail license or permit be
21 revoked.

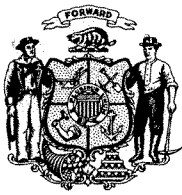
22 3. This paragraph shall not affect the authority of any municipality or the
23 department to revoke, suspend, or refuse to renew or issue a license or permit under
24 s. 125.12.

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2 requirements under this subsection. The rules shall ensure coordination between
3 the department's issuance and renewal of permits under this section and its
4 enforcement of the requirements of this subsection, and shall require that all
5 applications for issuance or renewal of permits under this section be processed by
6 department personnel generally familiar with activities of intoxicating liquor
7 wholesalers. The department shall establish by rule minimum requirements for
8 warehouse facilities on premises described in permits issued under this section and
9 for periodic site inspections by the department of such warehouse facilities.

10 **SECTION 9441. Effective dates; revenue.**

11 (1) The amendment of section 125.145 (by SECTION 3) of the statutes takes effect
12 on January 1, 2006.

13 (END)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1827/2
ARG:jld&lmk:jf
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1 2. A permittee under this section shall annually sell and deliver intoxicating
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14 (b), or by both, resulting from the violation, and the court may further order that the
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11 (1) The amendment of section 125.145 (by SECTION 3) of the statutes takes effect
12 on January 1, 2006.

13 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1827/3dn
ARG: *JK*

(date)

ATTN: Jennifer Kraus

The attached redraft eliminates the effective date provision and the treatment of s. 125.145 in bill section 3 of the "2" draft. Upon discussion with one of the drafters of the "attorney transfer" draft (LRB-0955), we have concluded that no additional treatment by bill section 3 (of the "2" draft) is necessary. If DOR decides to represent the state as authorized in s. 125.145 after January 1, 2006, it may only do so in a manner provided for under created s. 15.04 (4) (in LRB-0955).

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1827/3dn
ARG:lmk:rs

January 26, 2005

ATTN: Jennifer Kraus

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Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1827/3
ARG:jld&lmk:rs

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SECTION 4

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